

JOHN F. PASAK ET AL.

IBLA 82-634     Decided March 28, 1983

Appeal from decision of Arizona State Office, Bureau of Land Management, declaring placer mining claims null and void ab initio. A MC 114843, et al.

Affirmed.

1.     Mining Claims: Lands Subject To

Where land has been reconveyed to the United States and the reconveyance reserves the minerals to the grantor, the United States has no authority to recognize a claim for the minerals under the mining laws, 30 U.S.C. § 22 (1976), because the minerals are not owned by the United States. Such a claim is properly declared null and void ab initio.

APPEARANCES: Gordon J. O'Brien, Esq., Lake Havasu City, Arizona, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

John F. Pasak and others have appealed from a decision of the Arizona State Office, Bureau of Land Management (BLM), dated February 22, 1982, declaring certain placer mining claims null and void ab initio because the mineral estate was not in Federal ownership. 1/

Appellant's mining claims were located October 1, 1980, and recorded with BLM on November 7, 1980, pursuant to sec. 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). The claims are situated in the S 1/2 sec. 19 and the W 1/2 sec. 29, T. 15 N., R. 18 W., Gila and Salt River meridian, Mohave County, Arizona. In its February 1982 decision, BLM declared the mining claims null and void ab

---

1/ The claims are the Quail Placer's Ex 5 (A MC 114843), Quail Placer's Ex 6 (A MC 114844), Quail Placer's Ex 8 (A MC 114846) and Quail Placer's Ex 9 (A MC 114847). The appellants are listed in the February 1982 decision as John F. Pasak, John J. Pasak, Charles J. Pasak, John F. Pasak, Jr., Emma Jean Pasak, Tina Marie Pasak, Pete T. Rose, Art Lindzy, Dave Stopke, and J. Wilson.

initio because the public land records indicated that "the surface estate of sections 19 and 29, T. 15 N., R. 18 W., was reconveyed to Federal ownership September 20, 1968, but the mineral estate was retained in private ownership." Thus, BLM concluded, the land was not open to the location of mining claims.

In their statement of reasons for appeal, appellants contend that ownership of the mineral rights for the land involved herein "has reverted to the Federal Government" and that their claims are valid. Appellants cite the case of Texaco, Inc. v. Short, 454 U.S. 516 (1982), for the proposition that "mineral rights when they have been unused for twenty (20) years automatically lapse and pass to the owner of the surface property."

[1] It is well settled that where land has been reconveyed to the United States and the reconveyance reserves the minerals to the grantor, the United States has no authority to recognize a claim for the minerals under the mining law, 30 U.S.C. § 22 (1976), because the minerals are not property of the United States. Such a mining claim is properly declared null and void regardless of whether the claimant has performed assessment work or paid taxes on the land. John B. Craig, 68 IBLA 11 (1982); All Glory to God Church, 33 IBLA 61 (1977).

The case cited by appellants simply has no bearing on this matter. Texaco, Inc. v. Short, *supra*, involved the constitutionality of the Indiana Dormant Mineral Interests Act, Ind. Code §§ 32-5-11-1 through 32-5-11-8 (1976). That statute did provide for a reversion of a severed mineral interest to the current surface owner of the property where the mineral owner does not use the mineral interest or file a statement of claim for 20 years, with a 2-year grace period. However, the statute relates only to mineral interests within Indiana and has no bearing on such interests within Arizona.

In view of the fact that appellants' mining claims were located on land where the mineral estate was not in Federal ownership, BLM properly declared the claims null and void ab initio. See James W. Hansen, 1 IBLA 134 (1970).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski  
Administrative Judge

We concur:

Gail M. Frazier  
Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

